

CANADA / JUDGMENT

Liang v. Pearson

2025 BCSC 1277

COURT

Supreme Court of British Columbia

DECIDED

30 May 2025

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2025 BCSC 1277 Liang v. Pearson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Liang v. Pearson,

2025 BCSC 1277

Date: 20250530

Docket: S240988

Registry: Vancouver

In the Matter of the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241

and the Residential Tenancy Act, S.B.C. 2002, c. 78

Between:

Yu Hua Liang

Petitioner

And

Brant Pearson

Respondent

Before: The Honourable Mr. Justice Coval

On judicial review from: An order of the Residential Tenancy Branch,
dated December 13, 2023 (RTB File No. 910112968).

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

F. Wu

Counsel for the Respondent:

A.K. Aggarwal

Place and Date of Hearing:

Vancouver, B.C.

May 20, 2025

Place and Date of Judgment:

Vancouver, B.C.

May 30, 2025

- [1] THE COURT: The petitioner landlord challenges by judicial review the decision of a Residential Tenancy Branch arbitrator.
- [2] The decision in issue awarded the respondent tenant \$23,500 compensation for the petitioner having improperly terminated his lease.
- [3] The tenant resided in the landlord's strata unit in Coquitlam from June 1, 2020 to November 30, 2022. The termination came about because, on September 29, 2022, the landlord delivered a two-month notice to end tenancy for the landlord's use of the property, effective November 30, 2022, under the Residential Tenancy Act s. 49. The tenant accordingly vacated in compliance with that notice.
- [4] The landlord's daughter then moved into the unit on December 3, 2022, during her first year of university at Simon Fraser University. She vacated on April 1, 2023, so after only four months.
- [5] Under RTA s. 51(2), the daughter having not resided in the unit for six months, the tenant was entitled to 12 times the monthly rent payable as compensation for the termination unless the arbitrator excused the landlord under s. 51(3). The arbitrator found the landlord had not shown "extenuating circumstances" that prevented the landlord from having her daughter use the rental unit for the requisite six months, and therefore awarded the tenant the 12 months' rent as compensation.

- [6] The landlord argues that the decision was procedurally unfair and patently unreasonable. On procedural unfairness, the landlord says she was prevented from presenting her case in full, and the decision contained inadequate reasons for why the requisite extenuating circumstances were not made out on the landlord's evidence. On patent unreasonableness, the landlord argues that the arbitrator ignored evidence of the tenant's prior breaches of the lease without justification.

Background Facts

- [7] I incorporate into these reasons the helpful timeline in paragraphs 1(a)-(m) of the petitioner's submissions:
- (a) May 26, 2020: The Landlord and Tenant entered into a written residential tenancy agreement for the "Tenancy" of a rental unit located at 1209 - 525 Foster Avenue, Coquitlam British Columbia (the "Agreement"). The Tenancy was for a fixed term commencing on June 1, 2020, ending on November 30, 2020, and would continue on a month-to-month basis thereafter. The Rental Unit is a residential strata lot in the strata corporation, The Owners, Strata Plan EPS 4094 (the "Strata").
 - (b) June 1, 2020: The Tenancy commenced. The monthly rent for the Rental Unit was \$1,950.
 - (c) February 9, 2022: The Tenant executed a Form K: Notice of Tenant's Responsibilities for the Rental Unit to include a subtenant, Soomin Chun. Prior to doing so, the Tenant had sought and obtained consent from the Landlord to sublet the Rental Unit to Soomin Chun between February 15 and March 31, 2022 (the "Sublease").
 - (d) July to September 2022: The Tenant proceeded to sublet the Rental Unit on two separate occasions, following the Sublease, without the Landlord's knowledge nor authorization.
 - (e) September 19, 2022: The Landlord received an email from the Strata advising that the Tenant was actively subletting the Rental Unit online via the Airbnb platform ("Airbnb"). The Landlord forwarded this email to the Tenant, stating that listing the Rental Unit on Airbnb was a contravention of Strata bylaws. On that same day, the Landlord received a call from the Tenant and was led to believe that the Strata's correspondence was regarding the approved Sublease.
 - (f) September 28, 2022: Following an exchange of emails between the Landlord and the Strata, the Landlord discovered that the Tenant had sublet the Rental Unit on Airbnb on two occasions between July and September 2022, without the Landlord's authorization.
 - (g) September 29, 2022: As a result of the Landlord's daughter (the "Daughter") suggesting that she live in the Rental Unit to be closer to the Simon Fraser University campus, the Landlord issued and served the Notice upon the Tenant.
 - (h) November 30, 2022: The Tenancy ended.
 - (i) December 3, 2022: The Landlord's Daughter moved into the Rental Unit.

- (j) February 2023: The Landlord's Daughter began struggling with feelings of anxiety and depression as a result of living alone and away from her family. The Landlord and her Daughter discussed and agreed that the Daughter would move back home in April 2023, after her second semester of her first-year studies, as that would be less disruptive than having her move amidst attending classes and studying. As a result of this discussion, the Landlord listed the Rental Unit for sale.
 - (k) April 1, 2023: The Landlord's Daughter moved out of the Rental Unit.
 - (l) April 3, 2023: The Rental Unit was sold.
 - (m) June 23, 2023: The Tenant filed the Tenant's Application with the RTB.
- [8] I would add to that timeline chronologically two points. First, on February 8, 2023, the landlord listed the suite in question for sale. On February 20, 2023, an agreement for sale was signed.

The Arbitrator's Decision

- [9] In finding the landlord should not be excused from paying compensation under s. 51(3), the arbitrator said:

The daughter testified that they occupied the rental unit as of December 3, 2022 and left on April 1, 2023 due to school and the associated feelings of being lonely and depressed. The daughter admitted that the landlord listed the home for sale on February 8, 2023. The daughter confirmed the sale of the home occurred on April 3, 2023.

I find that feelings of loneliness or depression by the daughter do not qualify as sufficient reasons to justify an extenuating circumstance under section 51(3) of the Act.

- [10] In finding the tenant's prior breaches of the lease were irrelevant to the issues to be decided, the arbitrator said:

The daughter raised the Doctrine of Clean Hands, by stating that the tenant breached first and that the landlord could have issued a One Month Notice, which I advised was not done and therefore not relevant, which I will address later in this decision.

The daughter then raised section 62(3) of the Act, which the parties were advised was relevant to the landlord's response to the tenant's claim before me. Finally the daughter raised section 64(2) of the Act, which the parties were advised is being done, that this matter is being decided on its own merits.

I find the Doctrine of Clean Hands is not relevant to this matter as the landlord did not issue the tenant a One Month Notice and as such that argument is moot. The landlord ended the tenancy by a Two Month Notice and the landlord was aware of the penalty provisions of the Act as the Two Month Notice clearly reads as follows:

5. YOU MAY BE ENTITLED TO ADDITIONAL COMPENSATION

After you move out, if your landlord does not take steps toward the purpose for which this Notice was given within a reasonable period after the effective date of this Notice, your landlord must compensate you an amount equal to 12 months rent payable under your current tenancy agreement.

You must apply to the Residential Tenancy Branch to be awarded this compensation. Your landlord may be excused from paying this amount if there were extenuating circumstances that prevented your landlord from accomplishing the purpose for ending your tenancy or using the rental unit for that purpose for at least 6 months.

Governing Law

[11] I will not go much into the law because the parties agree on the applicable principles.

[12] Under s. 58(2) of the Administrative Tribunals Act, S.B.C. 2004, c. 45, the standard of review of a discretionary decision such as this, regarding whether there were extenuating circumstances, is patent unreasonableness as defined in s. 58(3). The standard of review for procedural fairness is whether the arbitrator acted fairly.

[13] Section 49(3) of the RTA says:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

[14] Under s. 51(2) of the RTA, a landlord must pay a tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that:

- a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of notice provided under s. 49; and
- b) the rental unit has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

See *Shigani v. Taylor*, 2024 BCSC 979.

[15] Under s. 51(3) of the RTA, a landlord may be excused from paying the tenant the amount required under s. 51(2) if there are extenuating circumstances that prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy (*Shigani*, para. 19).

[16] The Residential Tenancy Policy Guidelines have a section on extenuating circumstances which says this:

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation typically because of matters that could not be anticipated or were outside a reasonable owner's control.

Analysis

[17] With all due respect to the arbitrator, I agree with the landlord that the arbitrator's finding of no extenuating circumstances excusing a landlord from compensating the tenant breached procedural fairness. It did so because the decision fails to explain how and why that conclusion was reached (Kong v. Lee, 2021 BCSC 606, paras. 64-65; Middlegate Development Ltd. v. Acosta, 2023 BCCA 459, paras. 47-48).

[18] Again with all due respect, I also agree with the landlord that the discretionary decision can be characterized as patently unreasonable because the decision does not reflect consideration of the relevant factors regarding its conclusion of whether there were extenuating circumstances in the circumstances of this case.

[19] The daughter's evidence was that she moved into the suite to be closer to her studies at Simon Fraser University and that this was her first time living away from home. Her evidence of why she only resided in the premises for four months included this:

Because due to schooling and stress, and so I realize that be away from my family as well as my siblings and my pet kind of makes me feel alone, lonely, and depressed living alone.

I have requested to move back home around February, around January/February because of midterms, and therefore I was really, really stressed and wanted to go back home. But after I discussion with my family, I chose to stay until the end of the spring semester, which is April.

[20] The landlord's written submissions said that her daughter:

... strongly requested to move back home. As a parent, my utmost priority is to respect my daughter's wellbeing and support her choices for a living arrangement. This led to a decision to sell the unit.

[21] The arbitrator's decision does not offer any explanation for why this evidence did not qualify as extenuating circumstances. In my view, procedural fairness required the landlord to have some explanation for why these circumstances did not reasonably prevent the landlord from keeping her daughter in the premises for the full six months.

[22] The daughter's reasons for needing to return home - i.e. stress, depression, and loneliness - appear to be serious and valid considerations. There was no evidence these problems should have been anticipated or were within the landlord's reasonable control.

[23] In other words, in my view, procedural fairness required some explanation for why the landlord should not be excused from the compensation penalty in those circumstances.

[24] In the absence of such an explanation, I also find the decision failed to take statutory requirements into account under s. 58(3)(d). That is, it failed to take into account whether there were valid extenuating circumstances on the evidence.

- [25] Dealing with other matters raised in the hearing, I agree with the landlord that it is the initial decision that is the proper subject of this judicial review, not the review decision. That is because the bases for challenging the decision do not fall within the purview of review under RTA s. 79(2). I make no finding about whether the tenant's alleged prior breaches of the lease by subletting without consent were a legitimate consideration before the arbitrator under s. 51(3). I leave that issue for the reconsideration of this decision.
- [26] Finally, in terms of remedy, although I have found that an explanation is required for any finding that the landlord's reasons for having the daughter leave the unit and come home are not to be extenuating circumstances under s. 51(3), I cannot say that finding this to be such an extenuating circumstance is inevitable.
- [27] I therefore set aside the decision, the review decision, and the accompanying order, and direct the director or her delegate, other than the prior arbitrator, to reconsider the tenant's application under the Judicial Review Procedure Act s. 5.
- [28] Subject to submissions counsel wish to make, I would award costs to the petition against the respondent at Scale B.

(SUBMISSIONS ON COSTS)

- [29] THE COURT: Okay. Thank you very much. So I am going to change my order on costs, and I did say it was subject to the parties' submissions. Having heard the submissions about the without-prejudice correspondence that preceded the application, in my view, the respondent was offering to take no position on the very relief sought that I have in effect granted, and so I am going to award costs of the proceeding to the petitioner up to the date of the respondent's letter, and costs of the proceedings to the respondent from the date of the letter forward.

"Coval J."

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